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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

URUGUAY*

[5 December 1991]

Replies of the Government of Uruguay to the questions asked by the Committee against Torture

I. FIRST GROUP OF QUESTIONS

Question 1

It is considered to be an important omission from the report (CAT/C/5/Add.27) that it does not refer to the provisions regulating the arrest of persons placed at the disposal of the court (arts. 118-120 of the Code of Penal Procedure).

Question 2

What authority is empowered to arrest an alleged offender and for what periods of time?

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* The present document contains replies of the Government of Uruguay to the questions raised by the Committee against Torture at its seventh session during its consideration of the initial report of Uruguay on 15 and 21 November 1991 (see CAT/C/SR.95 and SR.103).

Reply

In Uruguay the preliminary penal investigation is carried out under the responsibility of the judge with the help of the administrative police, which is dependent administratively on the Executive Power.

Since entry into force of the Police Organization Act (Act. No. 13.963 of 22 May 1971) the administrative police has a theoretically atypical task. The Act added to the specific function of the police (the "maintenance of public order and the prevention of offences") the authority to "investigate offences, gather evidence and deliver offenders to the court".

Nevertheless, in exercising these functions it is subject to the restrictions laid down by the Constitution and by the legal provisions in force, in the context of which these functions must be interpreted.

A coherent interpretation of the provisions of the Code of Penal Procedure makes it possible to maintain that the police may arrest a person only on the basis of a prior order of the court. The exceptions to this general rule are spelt out in article 120 of the Code of Penal Procedure, which stipulates "Members of the police shall arrest a person even without an order of the court: (1) who is intending to commit an offence, at the moment when he is about to commit it; (2) who, having been legally arrested, attempts to flee; or (3) who is caught inflagrante delicto".

The order of court must be in writing and must comply with certain formalities and usages. Nevertheless, in cases of emergency a judge may give the order verbally, entering that fact in the record under pain of it being declared invalid (art. 119 of the Code of Penal Procedure).

Once arrested, the individual must be placed immediately at the disposal of the judge, who shall be obliged to take a statement from him within 24 hours and to begin the pretrial proceedings within 48 hours (art. 16 of the Constitution).

Question 3

Is a medical examination compulsory and what provisions govern it? When is an arrested person subjected to such an examination?

Reply

Medical examination of an arrested person is not compulsory from either an administrative or a legal point of view.

Under the provisions of article 176 of the Code of Penal Procedure the judge may order the bodily and mental examination of an alleged culprit, in which case it is carried out by experts dependent on the Judicial Power. Nevertheless, Decree-Law No. 14.470 of 11 December 1975, which regulates national prison conditions, contains some provisions that refer to medical intervention.

Article 55 of the Decree-Law, which refers to the provisions that regulate the admission of a prisoner to a prison establishment, provides in its paragraph 1 that the prisoner must be given a medical and psychological examination.

Article 24 provides that the medical service in each establishment shall, periodically inspect without prior notice, the food destined for the prisoners in order to ascertain whether its quality, preparation and distribution are in line with the requirements laid down in the Decree-Law.

Finally, article 28 provides that no measure of disciplinary punishment may be carried out that in the opinion of a physician may affect the health of a prisoner or her unborn or nursing child.

Question 4

With respect to Decree 690/980, what are the limitations it places on the police, since the Third Rota Labour Court of Appeal rejected the remedy of amparo in this case?

Reply

The Code of Penal Procedure which entered into force on 1 January 1981 reproduced the provisions on arrest that had been laid down in the old Code of Criminal Investigation of 1878.

In accordance with the provisions already described, the police are empowered to arrest persons only on written order of the competent judge, except in cases of flagrante delicto.

On 30 December 1980, a few days before the entry into force of the present Code of Penal Procedure, the Executive Power of the de facto Government of the time adopted Decree 690/980 under the title of "Decree on arrest for enquiries".

In its brief text the Decree grants the police authority to take any necessary conducive measures in case of a refusal on the part of suspects or witnesses to assist the police authorities and to keep the persons concerned on police premises with a view to obtaining any information they might have (art. 1), but imposes on the police the duty of immediately reporting on the matter to the competent court and stipulates that in the absence of an express judicial decision to the contrary, the persons indicated must not be detained on police premises for more than 24 hours (art. 2).

Although this Decree has not been repealed, it lacks executive force, since it is incompatible with legal provisions of higher rank and the court can declare it so when examining the legality of an arrest.

As for the ruling of the Appeal Court to which the expert refers, the refusal of leave to seek the remedy of amparo was based on the sum total of the court hearing and it is in no way permissible for the Executive Power to put forward any opinion concerning the ruling, which, in accordance with the Constitution and the law, is handed down by the independent Judicial Power.

Question 5

What principles underly the detention regime and what are the guarantees provided by article 26 of the Constitution?

Reply

The detention regime is governed by the provisions of Decree-Law No. 14.470 of 11 December 1975 and by the corresponding administrative, regulations, which are only applicable in those matters that have not been regulated by the law.

In accordance with this, the basic principle of any imprisonment is the legality of the deprivation of liberty involved. No one can be deprived of his liberty or confined to a prison establishment without an order to that effect from a competent court.

The provisions of Decree-Law No. 14.470 constitute a systematized development of the guiding principle set down in article 26 of the Constitution which stipulates that prisons shall be used only as a means of assuring that convicts and unconvicted prisoners are re-educated, acquire an aptitude for work and do not revert to crime.

It embodies the essential principle of individualized treatment by separating the inmates by category into unconvicted and convicted prisoners, distinguishing within each of those categories between adult and juvenile offenders and between first offenders and recidivists or habitual offenders, while at the same time adopting a system of periodic classification and reclassification as a way of meeting the need for changes of category and ensuring the step-by-step application of the treatment in question (arts. 2, 25, 54 and 57 of Decree-Law No. 14.470).

It contains humanitarian provisions ensuring the protection of pregnant women prisoners and authorizing the keeping of small children in their care within the establishment itself. It makes obligatory primary education for illiterate prisoners and higher grades of education for the rest, with the possibility of obtaining certificates that do not state where the learning took place (arts. 27-30 and 32-36 of Decree-Law No. 14.470).

It makes provision for cultural, sporting and recreational activities and lays an obligation on the administration to keep the inmates properly informed of important national and international events (arts. 38 and 39 of Decree-Law No. 14.470).

It regulates the working activities of the inmates - both their duties and their rights - and everything concerned with remuneration and the distribution of pay as a supremely effective instrument for the higher purposes of reinsertion into society (arts. 40 to 47 of Decree-Law No. 14.470).

It establishes a progressive regime, with periods of temporary leave for the important purpose of strengthening and maintaining family and social ties and for working and managing paid tasks. These periods of leave depend on how

well the treatment is developing and on the reliability and sense of responsibility acquired by each prisoner (art. 61-65 of Decree-Law No. 14.470).

Priority is given to behaviour within the establishment which is considered as "one of the indications for assessing the prisoner's adaptation to treatment" and an essential condition if he is to have the benefit of temporary periods of leave (arts. 58-62 of Decree-Law No. 14.470).

It provides that "any prisoner has the right of petition and complaint without previous censorship to the prison authorities, administrative authorities and the courts" (art. 18 of Decree-Law No. 14.470).

As for the authorities responsible for supervision, article 5 lays down that the prisoners shall remain permanently at the disposal of the competent court in regard to everything connected with the process of law, it being within the exclusive competence of the prison authorities to apply the administrative side of the system of imprisonment without prejudice to the stipulations of articles 315 to 317 of the Code of Penal Procedure.

This limitation of the prerogatives of the courts is not commendable and the Executive Power has therefore remitted to Parliament a draft Code of Penal Procedure (drawn up by a Commission consisting of three delegates of the Executive Power, two of the Supreme Court of Justice, two of the University of the Republic and two of the Bar Association of Uruguay), setting up "courts of execution and supervision", whose sole task will be to monitor the serving of all types of penal sentence and all problems arising from the serving of the sentence and above all to keep a watchful eye on the conditions and modalities of internment and treatment of prisoners; these courts will have the widest possible powers.

Question 6

It is considered that the Regulation of 1938 is incompatible with the Constitution. Has any measure been taken to correct this dichotomy?

Reply

The 1938 Regulation is an act of the administration that has been modified by the adoption of constitutional and legal provisions at later dates. It is only in regard to aspects that have not been rescinded and on topics that have not been covered by the constitutional and legal provisions in force in that regard that this Regulation can still be applied.

Question 7

Articles 316 and 317 of the Code of Penal Procedure set forth the powers of the judge in regard to monitoring prison conditions. In annex 1 the Court states that the judge can receive complaints and only pass them on. The Expert considers this to be a contradiction since the judge lacks sufficient powers to correct the situation. He wishes to know whether the Government is thinking of changing or modifying this contradictory situation.

Reply

As stated in the reply given to question 6, the limitations which the present legal system places on the powers of the courts to monitor the serving of penal sentences, particularly in regard to the conditions of imprisonment and treatment, are inappropriate.

For that reason the Executive Power has submitted to Parliament a draft Code of Penal Procedure substantially modifying the situation by creating "courts of execution and supervision", one of whose tasks will be specifically "safeguarding the rights of prisoners serving a sentence or security measure and reporting any abuses and irregularities that may occur in the observance of the rules governing the prison system; they will have power on their own initiative to order disciplinary sanctions" and "after informing the director of the establishment and the centres of classification, diagnosis and treatment that exist, to decide on classification and promotions or demotions in classification"; "they are empowered to receive petitions and complaints from prisoners in regard to the prison regime and treatment in so far as they affect fundamental rights and to report to the competent court". "They may authorize working or domiciliary leave in every case", "authorize the transfer of a prisoner to another prison establishment", "authorize hospitalization", "make visits to or inspections of prison establishments whenever they think necessary, but at least once every 30 days", etc.

Question 8

The expert does not agree that the various hypotheses set forth in the report (CAT/C/5/Add.27) amount to an extension of the definition of torture, since the term is considered to be of wider scope than the offences characterized and defined in articles 143, 150, 162 and 310 of the Penal Code. All those provisions lack a subjective element that is present in the Convention. In addition, he believes that it is not enough to restrict the possibility of this class of offence to cases involving the functioning of the public authorities alone. The Convention is considered to be of wider scope in this respect also. What legal steps, if any, are being taken to correct this situation?

Reply

For the moment no provision has been adopted characterizing torture as a separate offence.

In 1987 the Uruguayan Bar Association (a private professional society with legal personality) submitted to the National Parliament the draft of a law drawn up by its Human Rights Commission embodying in domestic law new types of criminal act, among which torture was envisaged. The text is as follows:

> "Whoever inflicts any form of torture on a person deprived of liberty shall be punished by two to eight years rigorous imprisonment. By torture shall be understood: (a) any act by which physical or mental suffering is inflicted to obtain information, to inflict punishment or for intimidatory purposes either on the suspect or on third persons;

(b) subjection to cruel inhuman or degrading punishment and treatment;
(c) application of treatment tending to efface the subject's personality or diminish his physical or mental capacity, even though they do not cause physical pain or mental illness.

If the crime of torture should result in a personal injury, the sentence shall be from 2 years and 6 months' to 8 years' rigorous imprisonment. If such an injury is serious, the penalty shall be from 3 to 10 years' rigorous imprisonment; if it should be extremely serious, the penalty shall be from 5 to 15 years' rigorous imprisonment and if it results in death the penalty shall be from 16 to 25 years' rigorous imprisonment."

This draft has not been considered by the Legislative Power.

Through its human rights department the Ministry for Foreign Affairs is implementing a draft project for technical cooperation with the United Nations Centre for Human Rights, as part of which it is proposed to carry out an exhaustive analysis of the national legislation at present in force in order to bring it into line with international law, which has mandatory force for the State in each respect, putting forward any proposal for reform they consider necessary for that purpose. Without doubt one of the instruments that will be borne in mind when carrying out this harmonization will be the Convention against Torture.

Question 9

Are the police empowered to carry out interrogations during the pre-indictment period? What rules govern this and what powers do the police possess in this respect?

Answer

The scope and content of the pre-indictment stage are regulated by article 112 of the Code of Penal Procedure, which states "That stage in examination will be considered as pre-trial proceedings that extends from the initiation of the penal procedure until an order is issued that sets aside the record of proceedings through lack of evidence on which to proceed or until a committal order is made". The penal procedure begins with the declaration made by the accused before a judge under the protection of the provisions of article 16 of the Constitution.

In 1989 the Supreme Court of Justice declared that pre-trial proceedings are a constitutionally admissible form of judicial process.

Question 10

The provisions of article 15 of the Convention with regard to confession seem to be wider in scope than those listed in the report. Does this entail the possibility of invoking article 15 of the Convention in every case? In a particular case? In what cases?

Reply

In positive Uruguayan law, the only confession that has probative force in a penal case is one made before the competent court, with the person confessing having a lawyer present.

A confession made in an administrative setting constitutes an "illicit" piece of evidence since it violates the guarantee of the natural court and the rights of the defence.

Although the police may take down a confession, it has no value other than as an account of the facts and the persons involved.

In view of this, positive Uruguayan law does not recognize the validity or probative force of any confession made under torture and this is compatible with the provisions of article 15 of the Convention.

Question 11

What political motives led Uruguay to adopt the Immunity from Prosecution Act ("Ley de caducidad de la pretensión punitiva del Estado") and what undesirable effects has it had on the public consciousness?

Reply

The priority political objective of Act No. 15.848 of 22 December 1986 ("Immunity from Prosecution Act") was to bring about reconciliation in Uruguay and make the future of democracy and of the rule of law fully secure, stable and firm, in order both to avoid future violations of human rights and to guarantee the observance of those rights.

This solution did not imply forgetting or morally condoning the reprehensible facts that had occurred but it was the only possible way of setting the past finally behind us, strengthening the rule of law and building the future together in peace.

An analysis of the situation in Uruguay today supports the view that the path chosen, which was approved by the majority of the voters in the plebiscite carried out on 16 April 1989 (and that fact has great importance for a people so respectful of the popular will as the Uruguayans), has attained the objectives set and has not had any unwished-for or undesirable effects. Today in Uruguay there is social peace and democratic stability. The organs of State are no longer violating human rights - on the contrary they are guaranteeing their observance; there are no violent groups. Differences are being resolved within the democratic system.

Question 12

Explain the experience of the Public Prosecutor's offices. In what way do they supervise the police?

Reply

The mixed structure of the Uruguayan penal process makes it a responsibility of the judge to carry out primary verification of the truth or falsity of a report of a crime.

The judge is empowered to assign and attribute responsibility for the facts and to include in his inquiries any events or persons that he considers necessary for the purposes of the preliminary judicial examination.

Once evidence has been collected which he considers sufficient to assign responsibility for an offence to a particular person, he begins the prosecution process through an order initiating the preliminary stage.

The Public Prosecutor's Office, despite having a monopoly of exercise of penal action, is not empowered judicially or in any other way to investigate and possesses no power of supervision over police activity.

Question 13

What measures did the Government take in regard to the deaths of Inciarte and Machado, which had repercussions among the people?

Reply

The Ministry of the Interior initiated an administrative inquiry into Machado's death that ended in punishment for a police superintendent and an assistant. The case history was handed over to the judicial authorities and a final decision in respect of it is still awaited.

The case of the death of Inciarte also gave rise to an administrative inquiry, but no responsibilities were found to attach to the officials in question.

Question 14

What were the results of the visit from the Supreme Court of Justice to the Libertad Penal Establishment in November 1990?

Reply

In November 1990 the Supreme Court of Justice carried out its annual visit to prisons.

By means of this mechanism for examining penal processes the court is constitutionally empowered to grant of its own will dismissal of a case or release on bail.

During the visit the members of the Supreme Court went into the cell block and conversed with the inmates, listening without witnesses to everything that the inmates wished to tell them. They received innumerable protests against ill-treatment and even accounts of self-injury to obtain transfers or to ensure that attention was paid to their unsatisfied claims.

The information received was duly processed and sent on to the appropriate authorities: the Ministry of the Interior, to which the management of the establishment is answerable and the judge in the Department of San José where the penal centre is situated. After the visit the prison authorities were dismissed and appropriate action launched before the courts.

Question 15

Information is requested on suicides in prisons for juveniles at Miguelete.

Reply

During 1991 two juveniles committed suicide in the Miguelete establishment. To elucidate the first of these cases, which occurred on 11 February, the National Institute for Minors ordered an administrative inquiry which ended in the dismissal of the two special staff responsible for caring for the juveniles.

In regard to the second case, which occurred on 15 May, the National Institute for Minors also ordered an administrative inquiry which, although it led to no allocation of personal responsibility, did give rise to a series of important corrective actions in the service.

In both cases the relevant information was passed on to the judicial authorities.

II. SECOND GROUP OF QUESTIONS

Question 1

Are there any political prisoners in Uruguay? If so, how many and under which jurisdiction?

Reply

Since March 1985 there have been no political prisoners in Uruguay. On 1 March a Government came to power which had been elected by popular ballot after more than a decade of military authoritarianism. One of the first laws passed by the democratic parliament was Act No. 15.737 ("The National Pacification Act"). As a result of its entry into force all persons who had been imprisoned for having committed political crimes or crimes inspired by political motives or who had been imprisoned for political motives were immediately released.

Question 2

In regard to paragraph 11 of the report (CAT/C/5/Add.27) what is the scope of article 317 (3) of the Uruguayan Penal Code?

Reply

Article 317 of the Penal Code forms part of a chapter on offences against the physical and moral integrity of the person among detainees and refers to a grading of the offence of bodily harm, i.e. serious injury.

The article lists hypothetical cases of various types of offence, subject to penalties ranging from 20 months' imprisonment to six years' rigorous imprisonment.

One of these hypothesis relates to injuries that cause a tortured woman to give birth prematurely. They are considered as serious injury and anything that causes interruption of the normal process of pregnancy and results in the premature birth of a child will be punished as such.

This hypothesis is supplemented by the provisions of article 318 (5), which classifies as an extremely serious injury, punishable with penalties ranging from 20 months' imprisonment to six years' rigorous imprisonment, treatment that causes abortion in a pregnant woman.

This means that article 317 (3) considers as a serious injury any premature birth as distinct from an abortion.

Question 3

Paragraph 47 of the report would seem to run counter to article 2 of the Convention. Please give more information.

Reply

According to the provisions of article 168, paragraph 17, of the Constitution in force, the President of the Republic acting together with the respective minister or ministers or with the Council of Ministers, has the duty to take prompt measures of security, in grave and unforseen cases of foreign attack or internal disorder, giving an account within 24 hours to a joint session of the General Assembly or, during its recess, to the Permanent Commission, of the action taken and its motives, the decision of the latter bodies being final.

In the final analysis Parliament must decide on the measures. It may maintain them or abolish them as it thinks fit.

As for their effect on persons, the same paragraph lays down that the measures of security authorize only their arrest or removal from one place in the territory of the country to another, provided that they do not elect to leave it. These measures, like the others, must be submitted within 24 hours to a joint session of the General Assembly or to the Permanent Commission, which will make the final decision. Detention shall not be at a place intended for the incarceration of criminals.

On the other hand, article 31 of the Constitution which is to be found in the chapter on "Rights duties and guarantees", provides: "Individual security may not be suspended except with the consent of the General Assembly, or if it

has been dissolved or is in recess, the Permanent Commission, and in the event of an extraordinary case of treason or conspiracy against the country and even then such suspension may be used only for the apprehension of the guilty parties".

This provision is absolutely compatible with article 2 of the Convention, since in no case does it permit torture.

Question 4

With reference to the explanations given in regard to article 3 of the Convention, the expert considers that they are incomplete. He would like to know what happens in regard to the expulsion of a citizen under Uruguayan law and what the procedure is.

Reply

The first paragraph of article 37 of the Constitution of the Republic stipulates "The entry of any person into the Republic, his residence therein and departure with his property, are free, if he obeys the laws, except in cases of prejudice to third parties.

As will be seen in the report, there are no domestic provisions in Uruguayan law that run counter to the provisions of article 3 of the Convention and the provisions of that article represent what is traditionally practised in our country in this regard.

Question 5

With regard to article 9 of the Convention, the expert does not see how mutual judicial assistance can take place in the absence of a treaty.

Reply

The Eastern Republic of Uruguay has concluded extradition and mutual judicial assistance treaties with almost all the countries with which it maintains diplomatic relations. However, even in the absence of a treaty, in the case of the types of behaviour described as offences of a grave nature (art. 4 of the Convention against Torture and arts. 143, 150, 162 and 310 of the Uruguayan Penal Code) an extradition request or request for incriminating evidence can be asked for by another State party if accompanied by a detention order, a court sentence or a rogatory commission requesting evidence.

In this sense article 13 of our Penal Code provides "Extradition can be granted or offered also for crimes that are not covered by treaties, provided that such treaties do not prohibit such action".

Question 6

Concerning article 10 the expert is concerned that the report contained no reference to the human rights training of medical personnel, although they had been responsible for numerous cases of torture. What corrective measures have been taken in this regard?

Reply

As stated in the report, it is a constant concern of the Government to train persons responsible for the custody and treatment of prisoners. Among these the role of medical personnel is of particular importance. In the technical training project which the Ministry for Foreign Affairs is implementing with support from the United Nations Centre for Human Rights, a course is envisaged for doctors and advanced students of medicine that will deal with such topics as "The concept of human rights", "The principles of medical ethics", "Medical ethics and torture", "The rights of prisoners", "Mental health and human rights", etc.

This course is to be held in the next few months.

Question 7

In connection with article 11, what rules of procedure apply to the questioning of suspects?

Reply

Article 135 of the Code of Penal Procedure lays down the principle of immediacy, by stipulating "The examining judges must proceed forthwith to an investigation of the facts, except in situations where for special reasons those facts have to be obtained by correspondence or by means of rogatory commissions.

During the judicial examination, evidence of all the facts making up the offence and its circumstances must be obtained (art. 133 of the Code of Penal Procedure).

The judge or judicial marshal as the case may be, on express instructions from the judge responsible for the case, shall carry out the questioning, informing the prisoner of his rights and asking questions concerning the way the facts occurred, trying to establish the part played by the suspect in those facts, and to ascertain any aggravating or attenuating circumstances that might alter his degree of responsibility.

The questioning of the suspect on court premises can take place in the presence of his defending counsel if he so requests. The defender (with a Uruguayan degree in law or a foreign law degree revalidated by the University of the Republic and registered with the Supreme Court of Justice) shall be chosen by the suspect, or if he omits to do so the State will provide a defender.

The Public Prosecutor's Office may take part in all the acts of examination (art. 134 of the Code of Penal Procedure), ask for measures to be taken and make comments and reservations that it considers necessary to preserve the fidelity and exactness of the statement.

Finally, article 126 of the Code of Penal Procedure stipulates as an essential precondition for proceedings to continue that the suspect shall have made his statement in the presence of the defender and of the representative of the Public Prosecutor's Office.

Question 8

With reference to article 15, have there been any cases in which it has been established that a statement has been made as a result of torture? What decisions have then been taken by the courts? How has the evidence been assessed? And what degree of credibility then attaches to the confession?

Reply

For an answer to this question we refer to sentence No. 11.700 of the Fourth Rota Civil Appeal Court dated 17 November 1989 and published in "La Justicia Uruguaya".*

Question 9

With respect to article 16, are minors separated from adults and women from men?

Reply

We specified the principles underlying imprisonment in our reply to question 5 in the first group of questions (see above). It should be mentioned, however, that there are separate detention centres for men, women and minors. The bulk of the male prisoners in Montevideo are sent to the Santiago Vazquez prison complex or to the "Libertad" penal establishment.

Women are lodged in the correctional and detention facility for women or in the "Punta Lobos" establishment.

As for minors, under the provisions of article 34 of the Penal Code, they are not liable to criminal prosecution until the age of 18.

When they are arrested for criminal conduct they are interned by previous order of the juvenile judge, in public establishments run by the National Institute for Minors (INAME - The national authority for regulating juveniles in Uruguay) which are set aside exclusively for the imprisonment of minors.

III. Third group of questions

Question 1

What was the date of entry into force of the Uruguayan Penal Code? The date given in the report (CAT/C/5/Add.27) is not the right one.

Reply

The first Penal Code in Uruguay was approved on 18 January 1889 and entered into force six months afterwards on 18 July 1889 (Act No. 2.037).

The Code at present in force was promulgated on 4 December 1933 and entered into force on 1 August 1934 (Act No. 9.155).

Question 2

According to a report by Amnesty International, in some areas of Uruguay violations of human rights were still being perpetrated. Can these statements be confirmed?

Reply

In Uruguay events occasionally occur of the nature of those reported in the Amnesty International report. In the penal systems on the continent, especially after dictatorships, authoritarian and repressive practices have become ingrained and are difficult to eradicate.

However, these types of conduct do not represent at all a deliberate policy promoted or facilitated by the State but are isolated facts, due exclusively to the nature of their perpetrators, accomplices or abettors and in no way enjoying the consent or acquiescence of the State.

Furthermore, in every case in which the Government has had cognizance of this type of happening it has ordered the requisite administrative inquiries, which have led in many cases to punishments or dismissals and in which the case history has been handed over to the appropriate judicial authorities.

The policy of the democratic Uruguayan State is that State bodies should respect and guarantee the exercise of their rights by every person under their jurisdiction .

Question 3

Concerning paragraph 11 of the report, article 317 does not mention psychological injury. An expert considers that it should be included. Has the Government of Uruguay given any thought to this question?

Reply

Paragraph 2 of article 316 of the Penal Code defines injury as any physiological damage resulting in a disease of the body or mind.

Hence psychological lesions are included in the type of offence characterized as causing injury by the legal regulations in force in Uruguay.

27. A victim of torture has a right only to compensation from the State. Why is this not obtained directly from the person responsible for the aggression?

Reply

In principle positive Uruguayan law recognizes the personal and patrimonial liability of the agent who cases the injury.

However, if the injury was inflicted by a public official in the performance of a public function the objective liability of the State comes into play, in accordance with the provisions of article 24 of the Constitution of the Republic, because the act was by one of its agents.

Nevertheless, the State could reclaim from the public official the amount paid as compensation, always provided that said official had been guilty of gross negligence or fraud (art. 25 of the Constitution).

Question 5

Paragraph 47 of the report again omits, in speaking of abuses against the physical integrity of the detainees, to mention the psychological aspect. How frequent are abuses against physical integrity? What is meant here by "of very brief duration"?

Reply

The reference to "physical integrity" in paragraph 47 of the report can be clarified in the following terms: we mean by physical integrity the psychosomatic balance of the body and the psyche, thus covering the psychological aspect.

The term "of brief duration" refers to the fact that the Uruguayan Constitution stipulates that the suspension of individual security by the Executive Power with the approval of Parliament should be decided in response to serious and very exceptional circumstances, not permitting of any prolongation.

Question 6

With reference to paragraphs 48-51 of the report, if the national legislation contains an article such as article 29 of the Penal Code, what happens to the Convention against Torture, in which this approach is rejected? What has been the practice in this connection?

Reply

Uruguayan legal thinking and precedent have always recognized that the exoneration from criminal liability envisaged in article 29 of the Penal Code is only valid in cases in which the order is not "manifestly illegal", since if it is it cannot be claimed that the subordinate is under a duty to carry it out.

Hence this article 29 appears not to run counter to the provision of paragraph 3 of article 2 of the Convention.

Question 7

With reference to paragraph 62 of the report, Amnesty International reports that torture is still taking place in Uruguay. May this be because of the lack of education of medical professionals? Why are these professionals not trained in questions of human rights? Six hundred Uruguayan medical personnel are alleged to have violated human rights. In Denmark patients are being treated at this moment who did not dare to attend hospitals in Uruguay since the anaesthesia that they would be given would be administered by the same professionals who in their time had torture them. This question of medical professionals and their immunity from punishment must be urgently examined.

Reply

The tortures that have taken place in detention centres since the inauguration of the democratic Government, generally speaking and according to the reports submitted, have not been committed by medical personnel or under their direction, as occurred during the period of the de facto Government.

Despite this, the training of physicians on human rights topics is of vital importance for the Uruguayan Government and has therefore been included in the courses being held by the Ministry for Foreign Affairs in implementation of the project already mentioned in the replies given to other questions during examination of Uruguay's initial report.

Similarly, the Faculty of Medicine has introduced this group of topics, not as an independent subject but as part of the curricula on other subjects.

The problem of doctors who participated in torture not having been brought before the criminal courts was analysed very seriously by the whole country in the wider context of the implications of not calling people to account for violations of human rights committed during the de facto Government, when the Immunity against Prosecution Act was adopted and when its repeal or retention was discussed during the plebiscite of 1987. The path chosen is well known and a political assessment of it was given in the replies to the first group of questions (see above, question 11).

However, the discussion on what path to follow which took place following the approval by Parliament of Act No. 15.848 until its ratification by the electorate had the merit of constituting a resounding verdict of rejection and energetic repudiation of torture. Over and above the position adopted in each case, all the sectors that participated in this debate thereby indicated that they wished to put behind them the horrors of the past and find a way to continue to pursue the process of democratization already instituted.

Moreover, the topic of medical responsibility was assessed by the National Medical Ethics Commission convened by the Order of Physicians with the help of the Bar Association of Uruguay; the Commission issued a statement on the role played by graduate medical professionals and medical auxiliaries in the commission or abetting of acts of torture, expelling from the Order all those found guilty. In many cases, condemnation by the Ethics Commission prevented them from working in certain care services.

Question 8

Further information is requested on the threat passed on by the National Medical Association, in the sense that the Immunity against Prosecution Act was the result sustained propaganda saying that failure to approve it would place Uruguayan democratic institutions in jeopardy and open up the possibility of a return to power of the military.

Reply

The reasons for the adoption of the Immunity against Prosecution Act have already been stated in the replies to several questions put by the various experts. However, to give wider information, a copy is attached* of the speech made by the Minister for Foreign Affairs at Salamanca University under the title of "Democracy and reconciliation", analysing the ethical and political basis for the decision made first by Parliament and then by the electorate and the socio-political context in which the decision was taken.

IV. Fourth group of questions

Question 1

Is there any article in the Uruguayan Constitution that prohibits torture?

Reply

The text of the Constitution forms the legal basis for the institutional structure of the Uruguayan democratic State and as such does not characterize offences or describe specific forms of criminal behaviour. Hence it does not refer expressly to torture.

However, combined study of the provisions contained in articles 7, 26, 72 and 332 shows incontrovertibly that the use of torture is expressly prohibited by our Constitution.

Question 2

According to paragraph 38 of the report the crime of torture is not recognized as a separate offence in positive Uruguayan law. The criminal offences listed do not correspond to the definition in the Convention. In this connection, how is psychological injury compensated for when Uruguayan law only deals with bodily injury?

Reply

This question has already been exhaustively dealt with in the replies to the third group of questions (see above, question 3).

Question 3

With reference to article 286 of the Penal Code, an expert considers that the penalty for abuse of authority is not sufficiently rigorous in that it does not seem to conform to article 1 of the Convention. He requests more details on this lack of conformity and asks what legal correctives are being put into force.

Reply

This question has already been treated in the replies to the first group of questions (see above, question 8).

Question 4

With regard to paragraph 47 an expert considers that there is a great deal of ambiguity as to the length of time for which individual security is guaranteed and asks for more details of what is meant by "special circumstances".

Reply

This question has already been fully dealt with in the replies to the second group of questions (see above, question 3).

Question 5

Concerning article 2 of the Convention and paragraph 51 of the report, what is meant by "will have superseded the above-mentioned provision of domestic law"? Has there been a repeal or abrogation of the law? Clarification of this concept is requested because it is felt that it gives rise to real legal uncertainty as to the validity of the law for the ordinary citizen.

Reply

According to the provisions of our domestic law, international instruments that have been ratified and are in force occupy the same hierarchical rank as ordinary laws. Hence, in case of a conflict between a previous domestic law and a later international instrument the one that is later in time but has the same legal rank takes precedence.

Hence, Act No. 15.798 of 17 December 1985 abrogated any contradictory provisions to be found in the Penal Code.

Question 6

Concerning Article 3 of the Convention (non-refoulement), an expert asks about cases in which expulsion or refoulement was refused in Uruguay.

Reply

For example, on 26 September 1989 the Government of Chile asked for the extradition of Dr. Ramón Rojas. Dr. Rojas was director of a clinic that worked very closely with the Vicaría de la Solidaridad in Santiago de Chile and gave treatment to a man with a bullet wound who had been passed on to him by that institution. Inasmuch as the wounded man had been in a clash with the carabineros the military government of Chile accused him of breaking an ordinary law by committing an offence legally characterized as "Abetment of the offence laid down in Act 17.798 on the control of weapons and explosives". (The doctor who had directly treated the wounded man and the lawyer from the Vicaría who had passed him on to the clinic had been prosecuted for the same offence).

The Uruguayan Government refused Chile's extradition request on the grounds that there were well-founded fears that the citizen in question could be the victim of political persecution and that his life and physical integrity could be put in jeopardy.

In the same way, after the necessary legal procedures, the Chilean citizen in question was granted territorial asylum.

Question 7

With reference to articles 5 and 7 of the Convention: What is meant by paragraph 57 of the report? Does it mean that Uruguayan law is committed to prosecute under the terms of the Convention? Can acts of torture abroad be prosecuted? How is the competence of the State in this matter to be understood?

Reply

In accordance with the provisions of article 10 of the Penal Code:

> "Uruguayan law shall not apply to crimes committed by nationals or foreigners on foreign territory with the following exceptions: (1) offences against State security; (2) offences involving the forging of the State seal or the use of a forged State seal; (3) the forging of the national currency or of national public credit documents; (4) offences committed by a Uruguayan national and punishable both under foreign and national law, if the perpetrator is an inhabitant of the Republic and his extradition has not been requested by the authorities of the country in which he committed the offence; in such cases the most lenient law shall apply; (5) ...; (6) offences committed by foreigners to the detriment of a Uruguayan national or of Uruguay, subject to the provisions of the previous paragraph and provided that the circumstances set out therein are met and (7) all other offences subject to Uruguayan law under specific domestic provisions or under the provisions of international conventions."

Hence, according to the provisions in force, if a crime of torture is committed on the territory of another State party to the Convention and the person who committed the crime is arrested on Uruguayan territory, the Uruguayan State can: (1) deliver the offender for trial if an extradition request is made; (2) refuse extradition, and on the basis of the provisions of the Convention go ahead with the trial and apply the penalty called for by Uruguayan domestic law.

Question 8

In reference to article 10, an expert again expresses concern at the fact that there is no provision for training physicians in respect of human rights.

Reply

This concern is dealt with in the reply to the second group of questions (see above, question 6).

Question 9

With reference to article 5 of the Convention, for how long and under what circumstances can a detainee be held incommunicado? When does that occur? When does a person held incommunicado have legal assistance? What are the regulations concerning it and how can the courts monitor it?

Reply

In reply to this question it is essential to bear in mind what has already been said in reply to the first group of questions (see above questions 1 and 2), together with the following details.

Article 124 of the Code of Penal Procedure states:

> "Holding an imprisoned person incommunicado under the conditions laid down in article 118 can only be ordered by the judge, who must in any case be informed of the person's arrest. After taking a statement in accordance with the provisions of paragraph 2 of that article, the judge may order that the person be held incommunicado for a further 24 hours, if it is necessary for preliminary investigation of the case."

It emerges therefore, that holding a suspect incommunicado can in no case be extended without the knowledge of the judge and it is for the judge to order it or to bring it to a stop.

The accused has a right to be assisted by a defender from the moment that he begins to make a statement before the court. The defender (with a law degree recognized or revalidated by the University of the Republic and registered with the Supreme Court of Justice) has all the powers that will permit him to monitor the claims and judicial decisions relating to the person he is defending, in the interests of that person and of the law (art. 79 of the Code of Penal Procedure). The presence of the defender is mandatory and obligatory in all courts of law and the initiating order must contain the necessary data on said legal aid. Article 101 of the Code of Penal Procedure provides that specific grounds for nullity for defect of form shall be "Infringement of the rules governing the intervention and subjection to investigation of the suspect if they reduce safeguards for him (para. 3)."

Question 10

Is the medical examination carried out before the judge or when imprisonment takes place? Is the medical examination compulsory? What rules govern it?

Reply

This question was fully dealt with in the reply to the first groups of questions (see above, question 3).

Question 11

An expert would like more information on pre-trial detention, since detainees at that time are most vulnerable. Have there been cases of ill-treatment or death? What has happened during the last two years? Have there been investigations?

Reply

During the last two years there have been a few cases that provided evidence of the application of illegal measures to detainees. However, it is important to point out that in all the cases, and this is borne out by the report of Amnesty International, reports were made through both administrative and judicial channels.

Question 12

Is there in Uruguay a police to control the police in order to guarantee impartiality of the reports?

Reply

No. Any private citizen can submit reports on misconduct on the part of police officials either to the competent court or to the administrative authority concerned (Ministry of the Interior). Such reports follow the regular procedure. If the judicial authorities consider that they are justified they can order examination of the case and issue an initiating order, informing the Ministry of the Interior or the administrative authority concerned later that they have taken such a measure. That authority immediately proceeds as a preventive measure to suspend the suspected person from his job and the administrative investigation then follows its course, perhaps to end in the dismissal of the public official in question.

Question 13

Is there special protection for the mentally ill?

Reply

The Penal Code, among grounds for non-prosecutability, provides in its article 30 that "A person cannot be charged who at the moment that he committed an act was, because of physical, mental, constitutional or acquired illness or poisoning, in such a state of mental confusion that he was not capable, or only partially capable, of appreciating the illegal nature of the act or exercising any real judgement concerning it".

Article 131 of the Code of Penal Procedure in its turn states:

"Following an expert examination, if it is considered that the suspect at the moment of committing the act was in one of the states envisaged in article 30 of the Penal Code, an order can be made provisionally for his internment in a special establishment".

As for curative safety measures, article 341 of the Code of Penal Procedure requires "that they should be carried out in a special establishment or centre for the care of the mentally ill or be entrusted to a person outside such a centre and under determined conditions. In every case physicians must decide on the proper treatment. Those responsible for administrative compliance must inform the court every six months, with a medical opinion in support, of the development of the detained person".

Stoppage of the measures may be ordered by the court (art. 342 of the Code of Penal Procedure).

V. FIFTH GROUP OF QUESTIONS

Question 1

Since democracy was re-established in Uruguay, have there been cases of torture and if so what measures have been taken in respect of them?

Reply

Marginally there have been cases of ill-treatment but the requisite inquiries have been made both judicially and administratively with a view to determining personal and objective responsibilities in each case.

Question 2

Since it contains no definition of torture, does the Uruguayan Government intend to include such definition in its positive law?

Reply

This matter was dealt with in the replies to the first group of questions (see above, question 8).

Question 3

Does paragraph 39 of the report mean that the international offence of torture is recognized in Uruguay?

Reply

This matter is dealt with in the replies to the fourth group of questions (see above, question 5).

Question 4

With respect to paragraph 5 of the report, since what date has the death penalty been abolished?

Reply

In Uruguay the death penalty was abolished by Act No. 1.088 of 11 April 1870 and its abolition was adopted as part of the Constitution in our Magna Carta of 1918.

Question 5

What is the difference between habeas corpus and amparo? How is it applied in Uruguayan law?

Reply

A writ of habeas corpus may be entered before the courts responsible for penal matters to impel the arresting authority to explain and justify the legal grounds for an arrest.

Deprivation of liberty is illegal in every case (a) in the absence of an order from the competent court and (b) if the maximum time-limit for bringing the suspect before the judge has been exceeded (the maximum is 24 hours).

For a writ for habeas corpus to proceed, it is necessary that there should have been a decision of the administrative authority that infringes the right to freedom of movement.

The remedy of amparo requires for its application the existence of three objective elements: (a) there must be an act, deed or omission; (b) which damages, restrains, alters or threatens a recognized right or liberty expressly or implicitly recognized by the Constitution, with obvious illegality, causing or threatening to cause irreparable injury to the person entitled to the right or liberty; (c) the laws and legal regulations must provide no other judicial or administrative means of obtaining the same result as is obtained by interjection of an appeal for amparo.

Question 6

With reference to paragraph 41 of the report, would it not be preferable to incorporate in the Uruguayan Penal Code certain specific elements that the Republic agreed to in the Convention Against Torture?

Reply

The matter referred to was dealt with in the replies to the first group of questions (see above, question 8).

VI. SIXTH GROUP OF QUESTIONS

Question 1

In what circumstances can a person be maintained in detention? Before what court? For how long can a person be held incommunicado? What legal provisions protect and safeguard him?

Reply

This matter was dealt with in the replies to the first group of questions (see above, questions 1 and 2) and the fourth group (see above, question 9).

Question 2

In regard to confession, what kinds of confession are admissible? Those made to the police? Those made to a judge?

Reply

This matter was dealt with in the replies to the first group of questions (see above, question 10).

Question 3

An expert asks for details of the Amnesty International report on the dissolution of the military apparatus in Uruguay and the responsibility of civilians in what happened under the dictatorship.

Reply

Despite the concern shown by the expert, no direct reference to the Uruguayan military apparatus or to civilians who took part in the dictatorship and its acts emerges from the Amnesty International report.

Question 4

Did the present Government take any measures to remove from the national bureaucratic apparatus, judges, lawyers, and medical personnel who acted during the dictatorship in Uruguay?

Reply

The present Government is not carrying out inquiries on acts anterior to 1985 by public officials forming part of the State bureaucratic apparatus.

Question 5

Does the Immunity from Prosecution Act envisage or urge the retirement of civilians or professional people who took part in the military Government in Uruguay or have any sort of measures been taken in respect of these persons?

Reply

The Immunity from Prosecution Act does not deal with any of the hypotheses listed by the expert in his question.

VII. SEVENTH GROUP OF QUESTIONS

Question 1

An expert asks for statistics on ill-treatment in Uruguay and on the concrete measures taken in such cases, since he believes that it is not enough to promulgate and ratify the Convention.

Reply

No information is available and accessible that would make it possible for us in the brief time available to reply to the questions asked during examination of the initial report as to the number of cases of ill-treatment occurring annually in Uruguay. However, the Government will strive to obtain this information for submission to the Committee as soon as possible.

Question 2

With reference to article 150 of the Penal Code, how is the concept of criminal association applied? How many persons have been accused of this in the charges against them? Is there nothing concealed in this article?

Reply

Article 150 of the Uruguayan Penal Code was promulgated in its present wording in article 16 of Act No. 068 of 1972 (Act on the internal security of the State). That law was adopted at a historical moment of great domestic disturbance. Nevertheless, the basic provisions of a repressive nature that constitute the legal basis for judging political dissidents in Uruguay were expressly ruled out by article 17 of the National Pacification Act ("Amnesty Act").

Article 150 of the Penal Code which punishes the joint participation of several persons in the commission of crimes has remained part of the national body of laws. It should be pointed out that its present application has nothing to do with the historical circumstances which the country passed through at the time when it was adopted.

Question 3

In what very exceptional circumstances is a suspension of individual security allowed?

Reply

This matter was dealt with in the replies to the second group of questions (see above, question 3).

Question 4

With reference to article 29 of the Penal Code, an expert considers that this article is not compatible with the Convention. What measures are being taken in that respect?

Reply

This matter was dealt with in the replies to the third group of questions (see above, question 6).

Question 5

An expert would like information on the functions and responsibilities of the Public Prosecutor's Office.

Reply

This matter was dealt with in the replies to the first group of questions (see above, question 12) and the second group of questions (see above, question 7).

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* The Spanish version of these documents received from the Government of Uruguay may be consulted in the records of the United Nations Centre for Human Rights.